

Exhibit 1

Final Statement of Decision and
Judgment on Special Verdict- Modified
after Appeal in the *Switzer* action.

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FRESNO COUNTY SUPERIOR COURT
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FRESNO COUNTY SUPERIOR COURT
By: I. Herrera, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION – UNLIMITED CIVIL CASE

TED SWITZER;

Plaintiff,

v.

FLOURNOY MANAGEMENT, LLC, et. al.;

Defendants.

And Related Cross-Actions

Case No: 11 CE CG 04395

~~Proposed~~**FINAL STATEMENT OF DECISION
AND JUDGMENT ON SPECIAL
VERDICT – MODIFIED AFTER APPEAL**

Pursuant to the Remittitur and Opinion of the Court of Appeal, Fifth Appellate District,
filed on August 15, 2019, the following modifies and replaces the Final Statement of Decision and
Judgment on Special Verdict previously filed in this action on January 12, 2018.

Switzer v. Flournoy Management, LLC, et al. Case No. 11 CE CG 04395
FINAL STATEMENT OF DECISION AND JUDGMENT ON SPECIAL VERDICT – MODIFIED AFTER APPEAL

This action came on regularly for trial on August 22, 2017, in Department 501, of the above-entitled court, the Honorable Mark W. Snauffer presiding; plaintiff/cross-defendant/cross-complainant Ted Switzer and cross-defendants Dixie Switzer, Switzer Medical, Inc., Epsilon Distribution I, LLC and Charlie Medical, LLC, represented by Gregory L. Altounian, Esq. and Michael Carrigan, Esq.; defendant/cross-complainant/cross-defendant Robert Clark "Sonny" Wood, II and cross-defendant Access Medical, LLC represented by David L. Jones, Esq., Eleanor M. Welke, Esq. and John W. Phillips, Esq.

A jury of twelve persons and three alternates was duly impaneled and sworn, opening statements by counsel for plaintiff and defendant were given, and witnesses were sworn and gave testimony. The jury was duly instructed by the court and heard closing arguments by counsel, and the case was submitted to the jury on October 3, 2017. The jury deliberated, and thereafter returned to court on October 11, 2017, with its special verdict consisting of the questions submitted to the jury and the answers given thereto by the jury, which said special verdict was in the following words and figures.

PART I

Cross-Complaint of Ted Switzer (Direct Claims of Mr. Switzer)

A. Please answer the following questions regarding cross-complainant Ted Switzer's claim for breach of contract:

1. Did Mr. Switzer and Mr. Wood enter into a partnership contract?

☒ Yes ☐ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and proceed to section B of this verdict form.

2. Did Mr. Switzer do all, or substantially all, of the significant things that the contract required him to do or was his performance excused?

☒ Yes ☐ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and proceed to section B of this verdict form.

3. Did Mr. Wood fail to do something that the contract required him to do, or did he do something that the contract prohibited him from doing?

☒ Yes ☐ No

1 If your answer to question 3 is yes, then answer question 4. If you answered no, stop here,
2 answer no further questions, and proceed to section B of this verdict form.

3 4. Was Mr. Switzer harmed?

4 ☒ Yes ☐ No

5 If your answer to question 4 is yes, then answer question 5. If you answered no, stop here,
6 answer no further questions, and proceed to section B of this verdict form.

7 5. Was Mr. Wood's breach of contract a substantial factor in causing Mr. Switzer's harm?

8 ☒ Yes ☐ No

9 **B. Please answer the following questions regarding cross-complainant Ted Switzer's claim**
10 **for intentional misrepresentation:**

11 1. Did cross-defendant Mr. Wood make a false representation of a material fact to Mr.
12 Switzer?

13 ☒ Yes ☐ No

14 Did cross-defendant Access Medical make a false representation of a material fact to Mr.
15 Switzer?

16 ☒ Yes ☐ No

17 If your answer to question 1 is yes as to either cross-defendant, then answer question 2 for
18 that/those cross-defendant(s). If you answered no to both parts of question 1, stop here, answer
19 no further questions, and proceed to section C of this verdict form.

20 2. Did Mr. Wood know that the representation was false, or did he make the
21 representation recklessly and without regard for its truth?

22 ☒ Yes ☐ No

23 Did the Access Medical know that the representation was false, or did it make the
24 representation recklessly and without regard for its truth?

25 ☒ Yes ☐ No

26 If your answer to question 2 is yes as to either cross-defendant, then answer question 3 for
that/those cross-defendant(s). If you answered no to both parts of question 2, stop here, answer
no further questions, and proceed to section C of this verdict form.

3. Did Mr. Wood intend that Mr. Switzer rely on the representation?

☒ Yes ☐ No

1 Did Access Medical intend that Mr. Switzer rely on the representation?

2 X Yes No

3 If your answer to question 3 is yes as to either cross-defendant, then answer question 4 for
4 that/those cross-defendant(s). If you answered no to both parts of question 3, stop here, answer
5 no further questions, and proceed to section C of this verdict form

6 4. Did Mr. Switzer reasonably rely on the representation of Mr. Wood?

7 X Yes No

8 Did Mr. Switzer reasonably rely on the representation of Access Medical?

9 X Yes No

10 If your answer to question 4 is yes as to either cross-defendant, then answer question 5 for
11 that/those cross-defendant(s). If you answered no to both parts of question 4, stop here, answer
12 no further questions, and proceed to section C of this verdict form

13 5. Was Mr. Switzer's reliance on Mr. Wood's representation a substantial factor in
14 causing harm to Mr. Switzer?

15 X Yes No

16 Was Mr. Switzer's reliance on Access Medical's representation a substantial factor in
17 causing harm to Mr. Switzer?

18 X Yes No

19 **C. Please answer the following questions regarding cross-complainant Ted Switzer's claim
20 for concealment:**

21 1. Were Mr. Wood and Mr. Switzer partners?

22 X Yes No

23 If your answer to question 1 is yes, then answer question 2. If you answered no, stop here,
24 answer no further questions, and proceed to section D of this verdict form.

25 2. Did Mr. Wood intentionally failed to disclose certain facts to Mr. Switzer that Mr.
26 Switzer did not know and that Mr. Switzer could not reasonably have discovered?

X Yes No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here,
answer no further questions, and proceed to section D of this verdict form.

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3. Did Mr. Switzer know of the concealed facts?

☐ Yes ☒ No

If your answer to question 3 is no, then answer question 4. If you answered yes, stop here, answer no further questions, and proceed to section D of this verdict form.

4. Did Mr. Wood intend to deceive Mr. Switzer by concealing the facts?

☒ Yes ☐ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and proceed to section D of this verdict form.

5. If the omitted information [had] been disclosed, would Mr. Switzer reasonably have behaved differently?

☒ Yes ☐ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and proceed to section D of this verdict form.

6. Was Mr. Switzer harmed by the concealment?

☒ Yes ☐ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and proceed to section D of this verdict form.

7. Was Mr. Wood's concealment a substantial factor in causing Mr. Switzer's harm?

☒ Yes ☐ No

D. Please answer the following questions regarding cross-complainant Ted Switzer's claim for breach of fiduciary duty:

1. Was Mr. Wood the partner of Mr. Switzer?

☒ Yes ☐ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and proceed to section E of this verdict form.

2. Did Mr. Wood fail to act as a reasonably careful partner would have acted under the same or similar circumstances?

☒ Yes ☐ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and proceed to section E of this verdict form.

1 3. Was Mr. Switzer harmed?

2 ☒ Yes ☐ No

3 If your answer to question 3 is yes, then answer question 4. If you answered no, stop here,
4 answer no further questions, and proceed to section E of this verdict form.

4 4. Was Mr. Wood's conduct was a substantial factor in causing Mr. Switzer's harm.

5 ☒ Yes ☐ No

6 **E. Please answer the following questions regarding cross-complainant Ted Switzer's claim**
7 **for breach of fiduciary duty of undivided loyalty:**

8 1. Was Mr. Wood the partner of Mr. Switzer?

9 ☒ Yes ☐ No

10 If your answer to question 1 is yes, then answer question 2. If you answered no, stop here,
11 answer no further questions, and proceed to section F of this verdict form.

12 2. Did Mr. Wood knowingly act against Mr. Switzer's interests in connection with the
13 income pooling partnership agreement or act on behalf of a party whose interests were adverse to
14 Mr. Switzer in connection with the income pooling partnership agreement?

14 ☒ Yes ☐ No

15 If your answer to question 2 is yes, then answer question 3. If you answered no, stop here,
16 answer no further questions, and proceed to section F of this verdict form.

17 3. Did Mr. Switzer give informed consent to Mr. Wood's conduct?

17 ☐ Yes ☒ No

18 If your answer to question 3 is no, then answer question 4. If you answered yes, stop here,
19 answer no further questions, and proceed to section F of this verdict form.

20 4. Was Mr. Switzer harmed?

21 ☒ Yes ☐ No

22 If your answer to question 4 is yes, then answer question 5. If you answered no, stop here,
23 answer no further questions, and proceed to section F of this verdict form.

24 5. Was Mr. Wood's conduct was a substantial factor in causing Mr. Switzer's harm.

24 ☒ Yes ☐ No

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26 /

F. Please answer the following questions regarding cross-complainant Ted Switzer's claim for conversion:

1. Did Mr. Switzer own or have a right to possess spinal implants?

☒ Yes ☐ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and proceed to section G of this verdict form.

2. Did cross-defendant Mr. Wood substantially interfere with Mr. Switzer's property by knowingly or intentionally taking possession of or preventing Mr. Switzer from having access to the spinal implants or by refusing to return Mr. Switzer's spinal implants after Mr. Switzer demanded their return?

☒ Yes ☐ No

Did cross-defendant Access Medical substantially interfere with Mr. Switzer's property by knowingly or intentionally taking possession of or preventing Mr. Switzer from having access to the spinal implants or by refusing to return Mr. Switzer's spinal implants after Mr. Switzer demanded their return?

☒ Yes ☐ No

If your answer to question 2 is yes as to either cross-defendant, then answer question 3 for that cross-defendant. If you answered no to both parts of question 2, stop here, answer no further questions, and proceed to section G of this verdict form.

3. Did Mr. Switzer consent to the taking by Mr. Wood and, if so, was the consent obtained without any fraud on the part of Mr. Wood?

☐ Yes ☒ No

Did Mr. Switzer consent to the taking by Access Medical and, if so, was the consent obtained without fraud on the part of Access Medical?

☐ Yes ☒ No

If your answer to question 3 is no as to either cross-defendant, then answer question 4 for that cross-defendant. If you answered yes to both parts of question 3, stop here, answer no further questions, and proceed to section G of this verdict form.

4. Was Mr. Switzer harmed?

☒ Yes ☐ No

1 If your answer to question 4 is yes, then answer question 5. If you answered no, stop here,
2 answer no further questions, and proceed to section G of this verdict form.

3 5. Was Mr. Wood's conduct a substantial factor in causing Mr. Switzer's harm?

4 X Yes No

5 Was Access Medical's conduct a substantial factor in causing Mr. Switzer's harm?

6 X Yes No

7 If your answer to question 5 is yes as to either cross-defendant, then answer question 6 for
8 that cross-defendant. If you answered no to both parts of question 5, stop here, answer no further
9 questions, and proceed to section G of this verdict form.

10 6. On what date were the spinal implants converted by Mr. Wood?

11 9/7/2011

12 On what date were the spinal implants converted by Access Medical?

13 9/7/2011

14 7. What was the value of the spinal implants converted by Mr. Wood on the date of the
15 conversion?

16 \$ 513,083.00

17 What was the value of the spinal implants converted by Access Medical on the date of the
18 conversion?

19 \$ 513,083.00

20 **G. Please answer the following questions regarding cross-complainant Ted Switzer's claim
21 for negligence:**

22 1. Was Mr. Wood negligent?

23 X Yes No

24 Was Access Medical negligent?

25 X Yes No

26 If you answered yes for any cross-defendant in question 1, then answer question 2 for that
cross-defendant. If you answered no for all cross-defendants in question 1, stop here, answer no
further questions, and proceed to section H of this verdict form.

2. Was the negligence of Mr. Wood a substantial factor in causing harm to Mr. Switzer?

X Yes No

1 Was the negligence of Access Medical a substantial factor in causing harm to Mr.
2 Switzer?

3 ☒ Yes ☐ No

4 **H. Please answer the following questions regarding cross-complainant Ted Switzer's claim**
5 **for violation of Penal Code § 496:**

6 1. Did Mr. Wood obtain by theft property belonging to Mr. Switzer or conceal or
7 withhold or aid in concealing or withholding such property from Mr. Switzer?

8 ☒ Yes ☐ No

9 Did Access Medical obtain by theft property belonging to Mr. Switzer or conceal or
10 withhold or aid in concealing or withholding such property from Mr. Switzer?

11 ☒ Yes ☐ No

12 If you answered yes for any cross-defendant in question 1, then answer question 2 for that
13 cross-defendant. If you answered no for all cross-defendants in question 1, stop here, answer no
14 further questions, and proceed to Part II of this verdict form.

15 2. Did Mr. Wood know the property was obtained by theft at the time he received,
16 withheld, concealed, aided in concealing or withholding the property from Mr. Switzer?

17 ☒ Yes ☐ No

18 Did Access Medical know the property was obtained by theft at the time it received,
19 withheld, concealed, aided in concealing or withholding the property from Mr. Switzer?

20 ☒ Yes ☐ No

21 If you answered yes for any cross-defendant in question 2, then answer question 3 for that
22 cross-defendant. If you answered no for all cross-defendants in question 2, stop here, answer no
23 further questions, and proceed to Part II of this verdict form.

24 3. Did Mr. Wood's violation of Penal Code section 496, subdivision (a), cause Mr.
25 Switzer to suffer injury, damage, loss or harm?

26 ☒ Yes ☐ No

Did Access Medical's violation of Penal Code section 496, subdivision (a), cause Mr.
Switzer to suffer injury, damage, loss or harm?

☒ Yes ☐ No

1 If you answered yes for any cross-defendant in question 3, then answer question 4 for that
 2 cross-defendant. If you answered no for all cross-defendants in question 3, stop here, answer no
 3 further questions, and proceed to Part II of this verdict form.

4 4. What is the amount of Mr. Switzer's actual damages caused by Mr. Wood's violation of
 5 Penal Code section 496, subdivision (a)?

6 \$ 1,289,165.00

7 What is the amount of Mr. Switzer's actual damages caused by Access Medical's violation
 8 of Penal Code section 496, subdivision (a)?

9 \$ 1,289,165.00

10 PART II

11 Cross-Complaint of Ted Switzer (Claims for the Benefit of Flournoy)

12 I. Please answer the following questions regarding cross-complainant Ted Switzer's
 13 claim for the benefit of Flournoy for concealment:

14 1. Was Mr. Wood was the sole manager of Flournoy?

15 X Yes No

16 If your answer to question 1 is yes, then answer question 2. If you answered no, stop here,
 17 answer no further questions, and proceed to section J of this verdict form.

18 2. Did Mr. Wood intentionally failed to disclose certain facts to Flournoy and Flournoy's
 19 non-managing member, Mr. Switzer?

20 X Yes No

21 If your answer to question 2 is yes, then answer question 3. If you answered no, stop here,
 22 answer no further questions, and proceed to section J of this verdict form.

23 3. Did Flournoy and Mr. Switzer know of the concealed facts?

24 Yes X No

25 If your answer to question 3 is no, then answer question 4. If you answered yes, stop here,
 26 answer no further questions, and proceed to section J of this verdict form.

4. Did Mr. Wood intend to deceive Flournoy and Mr. Switzer by concealing the facts?

X Yes No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here,
 answer no further questions, and proceed to section J of this verdict form.

1 5. If the omitted information [had] been disclosed, would Flournoy and Mr. Switzer
2 reasonably have behaved differently?

3 ☒ Yes ☐ No

4 If your answer to question 5 is yes, then answer question 6. If you answered no, stop here,
5 answer no further questions, and proceed to section J of this verdict form.

6 6. Was Flournoy harmed?

7 ☒ Yes ☐ No

8 If your answer to question 6 is yes, then answer question 7. If you answered no, stop here,
9 answer no further questions, and proceed to section J of this verdict form.

10 7. Was Mr. Wood's concealment a substantial factor in causing Flournoy's harm?

11 ☒ Yes ☐ No

12 **J. Please answer the following questions regarding cross-complainant Ted Switzer's claim**
13 **for the benefit of Flournoy for breach of manager's duty:**

14 1. Was Mr. Wood was the sole manager of Flournoy?

15 ☒ Yes ☐ No

16 If your answer to question 1 is yes, then answer question 2. If you answered no, stop here,
17 answer no further questions, and proceed to section K of this verdict form.

18 2. Did Mr. Wood act in good faith toward Flournoy at all times in the performance of the
19 duties and obligations required of him while acting as Flournoy's manager?

20 ☐ Yes ☒ No

21 If your answer to question 2 is no, then answer question 2 [3]. If you answered yes stop
22 here, answer no further questions, and proceed to section K of this verdict form.

23 3. Was Flournoy harmed by Mr. Wood's failure to act in good faith in the performance of
24 the duties and obligations required of him while acting as Flournoy's manager?

25 ☒ Yes ☐ No

26 If your answer to question 3 is yes, then answer question 4. If you answered no, stop here,
answer no further questions, and proceed to section K of this verdict form.

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1 4. Was Mr. Wood's failure to act in good faith in the performance of the duties and
2 obligations required of him while acting as Flournoy's manager a substantial factor in causing
3 Flournoy's harm?

4 ☒ Yes ☐ No

5 **K. Please answer the following questions regarding cross-complainant Ted Switzer's claim**
6 **for the benefit of Flournoy for negligence:**

7 1. Was Mr. Wood negligent?

8 ☒ Yes ☐ No

9 Was Access Medical negligent?

10 ☒ Yes ☐ No

11 If you answered yes for any cross-defendant in question 1, then answer question 2 for that
12 cross-defendant. If you answered no for all cross-defendants in question 1, stop here, answer no
13 further questions, and proceed to section L of this verdict form.

14 2. Was the negligence of Mr. Wood a substantial factor in causing harm to Flournoy?

15 ☒ Yes ☐ No

16 Was the negligence of Access Medical a substantial factor in causing harm to Flournoy?

17 ☒ Yes ☐ No

18 **L. Please answer the following questions regarding cross-complainant Ted Switzer's claim**
19 **for the benefit of Flournoy for violation of Penal Code §496:**

20 1. Did Mr. Wood obtain by theft property belonging to Flournoy or conceal or withhold
21 or aid in concealing or withholding such property from Flournoy?

22 ☒ Yes ☐ No

23 Did Access Medical obtain by theft property belonging to Flournoy or conceal or
24 withhold or aid in concealing or withholding such property from Flournoy?

25 ☒ Yes ☐ No

26 If you answered yes for any cross-defendant in question 1, then answer question 2 for that
cross-defendant. If you answered no for all cross-defendants in question 1, stop here, answer no
further questions, and proceed to Part III of this verdict form.

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2. Did Mr. Wood know the property was obtained by theft at the time he received, withheld, concealed, aided in concealing or withholding the property from Flournoy?

☒ Yes ☐ No

Did Access Medical know the property was obtained by theft at the time it received, withheld, concealed, aided in concealing or withholding the property from Flournoy?

☒ Yes ☐ No

If you answered yes for any cross-defendant in question 2, then answer question 3 for that cross-defendant. If you answered no for all cross-defendants in question 2, stop here, answer no further questions, and proceed to Part III of this verdict form.

3. Did Mr. Wood's violation of Penal Code section 496, subdivision (a), cause Flournoy to suffer injury, damage, loss or harm?

☒ Yes ☐ No

Did Access Medical's violation of Penal Code section 496, subdivision (a), cause Flournoy to suffer injury, damage, loss or harm?

☒ Yes ☐ No

If you answered yes for any cross-defendant in question 3, then answer question 4 for that cross-defendant. If you answered no for all cross-defendants in question 3, stop here, answer no further questions, and proceed to Part III of this verdict form.

4. What is the amount of Flournoy's actual damages caused by Mr. Wood's violation of Penal Code section 496, subdivision (a)?

\$ 401,232.00

What is the amount of Flournoy's actual damages caused by Access Medical's violation of Penal Code section 496, subdivision (a)?

\$ 401,232.00

PART III

Cross-Complaint of Robert Clark "Sonny" Wood, II

M. Please answer the following questions regarding cross-complainant Robert Clark "Sonny" Wood, II's claim for money lent:

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1 1. Did Mr. Wood receive a valid assignment of Aramat Group, LLC's claim regarding a
2 loan made to Omega Solutions?

3 ☒ Yes ☐ No

4 If your answer to question 1 is yes, then answer question 2. If you answered no, stop here,
5 answer no further questions, and proceed to Part IV of this verdict form.

6 2. Did Aramat Group, LLC loan money to Ted Switzer at his request?

7 ☐ Yes ☒ No

8 Did Aramat Group, LLC loan money to Dixie Switzer at her request?

9 ☐ Yes ☒ No

10 Did Aramat Group, LLC loan money to Switzer Medical, Inc. at its request?

11 ☐ Yes ☒ No

12 Did Aramat Group, LLC loan money to Epsilon Distribution I, LLC at its request?

13 ☐ Yes ☒ No

14 Did Aramat Group, LLC loan money to Charlie Medical, LLC at its request?

15 ☒ Yes ☐ No

16 If you answered yes for any cross-defendant in question 2, then answer question 3 for that
17 cross-defendant. If you answered no for all cross-defendants in question 2, stop here, answer no
18 further questions, and proceed to Part IV of this verdict form.

19 3. What is the amount of money that Aramat Group, LLC lent to Ted Switzer at his
20 request?

21 \$ _____

22 What is the amount of money that Aramat Group, LLC lent to Dixie Switzer at her
23 request?

24 \$ _____

25 What is the amount of money that Aramat Group, LLC lent to Switzer Medical, Inc. at its
26 request?

\$ _____

What is the amount of money that Aramat Group, LLC lent to Epsilon Distribution I,
LLC at its request?

\$ _____

1 What is the amount of money that Aramat Group, LLC lent to Charlie Medical, LLC at its
2 request?

3 \$ 190,000.00

4 4. Was the money lent by Aramat Group, LLC to Ted Switzer at his request paid back to
5 Aramat Group?

6 ☐ Yes ☐ No

7 Was the money lent by Aramat Group, LLC to Dixie Switzer at her request paid back to
8 Aramat Group?

9 ☐ Yes ☐ No

10 Was the money lent by Aramat Group, LLC to Switzer Medical, Inc. at its request paid
11 back to Aramat Group?

12 ☐ Yes ☐ No

13 Was the money lent by Aramat Group, LLC to Epsilon Distribution I, LLC at its request
14 paid back to Aramat Group?

15 ☐ Yes ☐ No

16 Was the money lent by Aramat Group, LLC to Charlie Medical, LLC at its request paid
17 back to Aramat Group?

18 ☒ Yes ☐ No

19 If you answered no for any cross-defendant in question 4, then answer question 5 for that
20 cross-defendant. If you answered yes for all cross-defendants in question 4, stop here, answer no
21 further questions, and proceed to Part IV of this verdict form.

22 5. What amount of the money lent by Aramat Group, LLC to Ted Switzer at his request
23 has not been paid back to Aramat Group?

24 \$ _____

25 What amount of the money lent by Aramat Group, LLC to Dixie Switzer at her request
26 has not been paid back to Aramat Group?

\$ _____

What amount of the money lent by Aramat Group, LLC to Switzer Medical, Inc. at its
request has not been paid back to Aramat Group?

\$ _____

1 What amount of the money lent by Aramat Group, LLC to Epsilon Distribution I, LLC at
2 its request has not been paid back to Aramat Group?

3 \$ _____

4 What amount of the money lent by Aramat Group, LLC to Charlie Medical, LLC at its
5 request has not been paid back to Aramat Group?

6 \$ _____

7 PART IV

8 Damages

9 **N. Please answer the following questions regarding the claims of Ted Switzer:**

10 **Triggering Questions for Question 1:** Question 5 in Section F.

11 **Instructions for Question 1:** If your answer to Question 5 of Section F is NO or BLANK then
12 go to Question 2 in this Section. If your answer to this Question 5 of Section F is YES, then
13 answer Question 1 in this Section.

14 1. If you found that there was a conversion of spinal implants, what are Mr. Switzer's
15 damages for conversion of spinal implants?

16 Value of the implants at the time of conversion: \$ 513,083.00

17 Lost profits from sales of the implants: \$ 513,083.00

18 Prejudgment interest: \$ 64,732.00

19 Go to Question 2.

20 **Question 2 Triggering Questions:** Question 5 in Section A, Question 5 in Section B, Question
21 7 in Section C, Question 5 in Section D, Question 5 in Section E, Question 3 in Section G,
22 Question 3 in Section H.

23 **Instructions for Question 2:** If your answer to each of the above Triggering Questions is NO or
24 BLANK then go to Section 0. If your answer to any of these Triggering Questions is YES, then
25 answer Question 2.

26 2. What are Mr. Switzer's damages for his other claims?

Unreimbursed expenses: \$ 293,904.67

Lost profits for sales made during
the partnership period in 2011: \$ 318,666.00

Value of spinal implants (if you did not find a
conversion of the implants):

\$ N/A

Lost profits from the sales of the implants (if you
did not find a conversion of the implants):

\$ N/A

Prejudgment interest:

\$ 77,283.00

If Mr. Switzer's damages are \$0, go to Section P. If Mr. Switzer's damages are greater than \$0 then go to Question 3.

3. If you find that Ted Switzer suffered damages, do you further find by clear and convincing evidence that Robert Clark "Sonny" Wood, II acted with malice, fraud or oppression as those terms are defined in the instructions provided to you?

☒ Yes ☐ No

Go to Question 4.

4. If you find that Ted Switzer suffered damages, do you further find by clear and convincing evidence that Access Medical acted with malice, fraud or oppression as those terms are defined in the instructions provided to you?

☒ Yes ☐ No

Go to Section O.

O. Please answer the following questions regarding the claims of Ted Switzer made for the benefit of Flournoy:

Triggering Questions for Question 1: Question 7 in Section I, Question 4 in Section J, Question 2 in Section K, Question 3 in Section L.

Instructions for Question 1: If your answer to each of the above Triggering Questions is NO or BLANK then go to Section P. If your answer to any of these Triggering Questions is YES, then answer Question 2.

1. What are Flournoy's damages?

Profits from sales at Santa Barbara Cottage Hospital
and University Hospital, Augusta after August 15, 2011
and through December 31, 2011 :

\$ 401,232.00

Prejudgment interest:

\$ 50,620.00

1 If Flournoy's damages are \$0, go to Section P. If Flournoy's damages are greater than \$0, then go
2 to Question 2.

3 2. Shall Flournoy's damages include costs and attorney's fees, in an amount to be
4 calculated by the Court after judgment, for which Flournoy will become responsible in the
5 records inspection action filed by Mr. Switzer and in the cross-action filed by Flournoy against
6 Ted Switzer, Dixie Switzer, Jean Holmes and others.

7 ☒ Yes ☐ No

8 Go to Question 3.

9 3. If you find that Flournoy suffered damages, do you further find by clear and convincing
10 evidence that Robert Clark "Sonny" Wood, II acted with malice, fraud or oppression as those
11 terms are defined in the instructions provided to you?

12 ☒ Yes ☐ No

13 Go to Question 4.

14 4. If you find that Flournoy suffered damages, do you further find by clear and convincing
15 evidence that Access Medical acted with malice, fraud or oppression as those terms are defined
16 in the instructions provided to you?

17 ☒ Yes ☐ No

18 Go to Section P.

19 P. Please answer the following questions regarding the claims of Mr. Wood:

20 Triggering Questions for Question 1: Question 5 in Section M.

21 1. What are Mr. Wood's damages?

22 Money lent and not repaid: \$ _____

23 Signed: _____ /s/ _____, Presiding Juror

24 Dated: 10/11, 2017

25 **STATEMENT OF DECISION**

26 **REGARDING EQUITABLE ISSUES TRIED TO THE COURT**

Dissolution

Based on the evidence presented, Flournoy effectively ceased business operations in the
Fall of 2011. It is disabled from appearing in court due to failing to properly register and pay

1 taxes to the California Franchise Tax Board. In fact, Flournoy's counsel, with the consent of the
 2 parties, was excused from participating in the trial of this case due to that condition. Flournoy is
 3 for all practical purposes, dissolved. There is no evidence of the existence of third party creditors.

4 The only winding up would involve the collection of any judgment on behalf of Flournoy
 5 on the derivative claims. Plaintiff Switzer is authorized to take all reasonable steps to wind up the
 6 affairs of Flournoy under California and Delaware law as appropriate. Wood is also authorized
 7 and ordered to cooperate in that regard as well. The Court expresses no opinion as to who is the
 8 holder of any Flournoy attorney-client privilege at the present time.

9 The Court finds in favor of Switzer on the 23rd cause of action for dissolution of
 10 Flournoy.

11 Lost Profits

12 For all of the reasons stated on the record by the Court at trial, which are well
 13 summarized in the brief submitted by defendants herein (at 4-10), there is no substantial evidence
 14 that can reasonably sustain an award of lost profits after the year 2011, when Flournoy ceased
 15 operations.

16 Thus, the Court finds in favor of Defendants with respect to the 19th (unjust enrichment)
 17 and 25th (unfair competition) causes of action on the Switzer cross-complaint.1

18 Accounting

19 In the 18th cause of action of the cross-complaint, Switzer seeks an accounting from Mr.
 20 Wood. As set forth above, Flournoy is a non-operating entity, and the Court cannot ascertain
 21 what an accounting of Flournoy would accomplish. The jury has already assessed damages
 22 against Mr. Wood and Access based upon the evidence set forth at trial. Therefore, the Court
 23 denies the request for an accounting under the 18th cause of action of the cross-complaint.

24 //

25 /

26 Moreover, the Court does not find that there is any basis for injunctive relief pursuant to
 Business and Professions Code section 17200. Among other things, the Court finds credible the
 testimony of Thomas Parfenchuck, M.D. and Sean Early, M.D., that they were not coerced or
 prevented from doing business with Mr. Switzer. Dr. Early testified that he met with Mr. Wood
 only after he had decided to stop doing business with Mr. Switzer. In the view of the Court,
 health care providers have a legal right to do business with Switzer, Wood, or anyone else who
 can satisfy their product requirements.

Inspection

Plaintiff Switzer sought inspection and copying of Flournoy's books and records in the initial complaint. The Court finds that the books and records have been adequately provided during the course of the voluminous discovery in this case. However, to the extent there are any books and records of Flournoy outstanding that have not been produced, they are ordered to be produced by whoever is the custodian of those records to Switzer.

The issue of attorney's fees, if any, is reserved for a post-judgment motion.

Penal Code section 496

Plaintiff is seeking relief under Penal Code section 496, including treble damages pursuant to section 496(c).

Pursuant to the Remittitur and Opinion of the Court of Appeal, Fifth Appellate District, treble damages shall be awarded in favor of cross-complainant, Ted Switzer, and against cross-defendants, Robert Clark "Sonny" Wood, II and Access Medical, LLC, as set forth below, recognizing that the penal component of the treble damages (i.e., two times the amount of actual damages found by the Jury) shall be imposed separately and severally against each of said cross-defendants.

Pursuant to the Remittitur and Opinion of the Court of Appeal, Fifth Appellate District, attorneys' fees shall also be awarded in favor of cross-complainant, Ted Switzer, and against cross-defendants, Robert Clark "Sonny" Wood, II and Access Medical, LLC, jointly and severally, in such an amount as will be determined by the Court upon decision of cross-complainant's previously filed post-judgment motion for attorneys' fees.

MONEY JUDGMENT

It appears by reason of the special verdict that cross-complainant, Ted Switzer, is entitled to judgment on his direct claims against cross-defendants, Robert Clark "Sonny" Wood, II and Access Medical, LLC, jointly and severally, for **compensatory damages** in the amount of **\$1,780,751.67** (actual damages of \$1,289,165.00 plus \$349,571.67 (compensatory damages of \$1,638,736.67 minus that portion (\$1,289,165.00) also designated as actual damages caused by Wood's and Access Medical's violation of Penal Code §496(a)), plus \$142,015.00 prejudgment interest, equals \$1,780,751.67).

1 It also appears by reason of the special verdict that cross-complainant, Ted Switzer, is
 2 entitled to judgment on his direct claims against cross-defendants, Robert Clark "Sonny" Wood,
 3 II and Access Medical, LLC, severally, for **penalty damages** pursuant to Penal Code §496(c) in
 4 the amount of **\$2,578,330.00** as against each of the said cross-defendants (actual damages of
 5 \$1,289,165.00 found by the Jury on the Penal Code §496(c) claim (the compensatory component
 6 of Penal Code §496(c)), multiplied by 2 (the penalty component of Penal Code §496(c)), equals
 7 \$2,578,330.00), for a total award of penalty damages of \$5,156,660.00.

8 It also appears by reason of the special verdict that cross-complainant, Ted Switzer, is
 9 entitled to judgment against cross-defendants, Robert Clark "Sonny" Wood, II and Access
 10 Medical, LLC, jointly and severally, for costs in the amount of **\$59,651.81** as determined by the
 11 Court's March 21, 2018 order on cross-defendants' motion to tax costs, and **attorney's fees** in
 12 amounts to be determined by the Court and added to this judgment in accordance with post-
 13 judgment proceedings.

14 It also appears by reason of the special verdict that cross-complainant, Ted Switzer, is
 15 entitled to judgment for the benefit of Flournoy Management, LLC on his derivative claims
 16 against cross-defendants, Robert Clark "Sonny" Wood, II and Access Medical, LLC, jointly and
 17 severally, for **compensatory damages** in the amount of **\$451,852.00** (actual damages of
 18 \$401,232.00, plus \$50,620.00 prejudgment interest, equals \$451,852.00).

19 It also appears by reason of the special verdict that cross-complainant, Ted Switzer, is
 20 entitled to judgment on for the benefit of Flournoy Management, LLC on his derivative claims
 21 against cross-defendants, Robert Clark "Sonny" Wood, II and Access Medical, LLC, severally,
 22 for **penalty damages** pursuant to Penal Code §496(c) in the amount of **\$802,464.00** as against
 23 each of the said cross-defendants (actual damages of \$401,232.00 found by the Jury on the
 24 Penal Code §496(c) claim (the compensatory component of Penal Code §496(c)), multiplied by 2
 25 (the penalty component of Penal Code §496(c)), equals \$802,464.00), for a total award of penalty
 26 damages of \$1,604,928.00.

It also appears by reason of the special verdict that cross-complainant, Ted Switzer, is
 entitled to judgment for the benefit of Flournoy Management, LLC on his derivative claims
 against cross-defendants, Robert Clark "Sonny" Wood, II and Access Medical, LLC, jointly and
 severally, for **additional compensatory damages** in the amount of **\$281,314.85** in costs and

1 attorney's fees determined by the Court's April 3, 2018 order on cross-complainant's motion for
 2 attorney's fees as being owed by Flournoy Management, LLC to Ted Switzer and others in the
 3 main (records inspection) action (\$981.60 costs and \$24,533.75 attorneys' fees) and in the cross-
 4 action filed in the name of Flournoy Management, LLC (\$21,020.00 costs and \$234,779.50
 5 attorneys' fees).

6 It also appears by reason of the special verdict that cross-defendants, Ted Switzer, Dixie
 7 Switzer, Switzer Medical, Inc., Epsilon Distribution I, LLC and Charlie Medical, LLC are
 8 entitled to judgment against cross-complainant, Robert Clark "Sonny" Wood, II, on the cross-
 9 complaint filed by said cross-complainant.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

10 1. That cross-complainant, Ted Switzer, have judgment in the amount of
 11 \$1,840,403.48 against cross-defendants, Robert Clark "Sonny" Wood, II and Access Medical,
 12 LLC, jointly and severally, as and for compensatory damages and costs, plus attorney's fees in
 13 such amounts as will be determined by the Court in post-judgment proceedings; and,

14 2. That cross-complainant, Ted Switzer, have judgment in the amount of
 15 \$2,578,330.00 against cross-defendant, Robert Clark "Sonny" Wood, II, severally, as penalty
 16 damages pursuant to Penal Code §496(c); and,

17 3. That cross-complainant, Ted Switzer, have judgment in the amount of
 18 \$2,578,330.00 against cross-defendant, Access Medical, LLC, severally, as penalty damages
 19 pursuant to Penal Code §496(c); and,

20 4. That cross-complainant, Ted Switzer, for the benefit of Flournoy Management,
 21 LLC, have judgment in the amount of \$733,166.85 against cross-defendants, Robert Clark
 22 "Sonny" Wood, II and Access Medical, LLC, jointly and severally, as compensatory damages;
 23 and,

24 5. That cross-complainant, Ted Switzer, for the benefit of Flournoy Management,
 25 LLC, have judgment in the amount of \$802,464.00 against cross-defendant, Robert Clark
 26 "Sonny" Wood, II, severally, as penalty damages pursuant to Penal Code §496(c); and,

6. That cross-complainant, Ted Switzer, for the benefit of Flournoy Management,
 LLC, have judgment in the amount of \$802,464.00 against cross-defendant, Access Medical,
 LLC, severally, as penalty damages pursuant to Penal Code §496(c); and,

7. That cross-complainant, Robert Clark "Sonny" Wood, II, take nothing by way of his cross-complaint and that cross-defendants, Ted Switzer, Dixie Switzer, Switzer Medical, Inc., Epsilon Distribution I, LLC and Charlie Medical, LLC have judgment against Robert Clark "Sonny" Wood, II on said cross-complaint; and,

8. That cross-complainant, Ted Switzer, take nothing with respect to the 18th, 19th, and 25th causes of action on the cross-complaint against cross-defendants Robert Clark "Sonny" Wood, II and Access Medical, LLC; and,

9. That cross-complainant, Ted Switzer, have judgment on the 23rd cause of action of the cross-complaint for dissolution and winding up of Flournoy. Switzer is authorized to take any and all reasonable steps to wind up the affairs of Flournoy pursuant to California and/or Delaware law, as applicable; and,

10. That post-judgment interest on the specific dollar amounts awarded above shall accrue beginning on April 3, 2018 (see, *Chodos v. Borman* (2015) 239 Cal.App.4th 707, 712-714 and *Snapp v. State Farm Fire & Casualty Co.* (1964) 60 Cal.2d 816, 820-822).

DATED: Sept. 12, 2019

Rosemary McGraw
JUDGE OF THE SUPERIOR COURT

COSTS ADDED TO JUDGEMENT IN THE AMOUNT OF

\$ 43,410.00

Superior Court Clerk

By

[Signature] 10-30-19
Deputy Dated

COSTS ADDED TO JUDGEMENT IN THE AMOUNT OF

\$ 2,460.17

Superior Court Clerk

By

[Signature] 9-12-19
Deputy Dated

COSTS ADDED TO JUDGEMENT IN THE AMOUNT OF

\$ 437,733.00

Superior Court Clerk

By

[Signature] 10-31-19
Deputy Dated